

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
MICHAEL H. AHRENS, Cal. Bar No. 44766  
3 STEVEN B. SACKS, Cal. Bar No. 98875  
JEFFREY K. REHFELD, Cal. Bar No. 188128  
4 ORI KATZ, Cal. Bar No. 209561  
Four Embarcadero Center, 17th Floor  
5 San Francisco, California 94111-4106  
Telephone: 415-434-9100  
6 Facsimile: 415-434-3947

7 Proposed Attorneys for The Billing Resource, dba  
Integretel

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 [SAN JOSE DIVISION]

11  
12 In re  
13 THE BILLING RESOURCE, dba  
INTEGRETEL, a California corporation,  
14 Debtor.  
15 Tax ID: 33-0289863  
16

Case No. 07-52890

Chapter 11

17 THE BILLING RESOURCE, dba  
INTEGRETEL, a California corporation,  
18 Plaintiff,  
19 v.  
20

Adv. Proc. No. 07-05156

**DECLARATION OF KEN DAWSON IN  
SUPPORT OF EMERGENCY MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

21 FEDERAL TRADE COMMISSION, and  
DAVID R. CHASE, not individually, but  
solely in his capacity as receiver for  
22 Nationwide Connections, Inc., Access One  
Communications, Inc., Network One Services,  
23 Inc., 411TXT, Inc., CELL-INFO-USA, INC.,  
Enhanced Billing Services, Inc., Toll Free  
24 Connect, Inc., Cripple Creek Holdings, LLC,  
Built to Last, LLC, Not Fade Away, LLC, He's  
25 Gone, LLC, The Other One, LLC, Turn on  
Your Love Light, LLC, China Cat Sunflower,  
26 LLC, Lazy River Road Holdings, LLC,

Date: September 26, 2007  
Time: 2:15 p.m.  
Place: United States Bankruptcy Court  
280 South First Street  
San Jose, California  
Judge: Hon. Arthur S. Weissbrodt  
Courtroom: 3020

27 Defendants.  
28

1 I, Ken Dawson, declare as follows:

2 1. I am the President and Secretary of The Billing Resource, dba Integretel, a  
3 California corporation (the "Debtor"), the named debtor in this case. I make this  
4 declaration in that capacity. I was one of the Debtor's founders in 1988 and I have been  
5 with the company ever since. I have personal knowledge of the matters set forth below. If  
6 called upon to testify as to those matter I could and would do so competently.

7 2. This declaration is submitted in support of the Debtor's "Emergency Motion  
8 For Temporary Restraining Order And Order To Show Cause Re: Preliminary Injunction  
9 And Declaratory Relief" (the "Motion"). Capitalized terms not defined herein shall have  
10 the meanings ascribed to them in the Motion.

11 3. The Debtor has filed a voluntary petition for relief under Chapter 11 of the  
12 Bankruptcy Code. The Debtor is operating its business pursuant to Sections 1107 and  
13 1108 of the Bankruptcy Code.

14 4. The Debtor was formed in 1988 based on a need for aggregators to facilitate  
15 billing and collections on behalf of smaller telecommunications companies that provided  
16 "alternative operator services" ("AOS") which otherwise could not afford to compete with  
17 the larger local exchange carriers ("LECs" or "Telcos") such as AT&T.

18 5. AOS involves providing long-distance calling on an occasional or as-needed  
19 basis in situations where often the consumer uses the service provider's assets or services  
20 without the consumer or the service provider knowing each other's identity. For example,  
21 a service provider owning the service contract for a hotel chain has no idea as to the  
22 identity of the consumer using its phones. If an AOS provider facilitates a collect call it  
23 needs a way to bill the consumer for that call.

24 6. The Debtor addressed a significant industry void by creating a service bureau  
25 focused entirely on billing-related services for AOS providers and others needing a means  
26 of billing consumers for their services. As the cornerstone to its billing capability, the  
27 Debtor maintains a full complement of billing and collection agreements with an estimated  
28 1,400 or more LECs and independent service providers so that it can place calls made

1 through an AOS on a LEC bill. This infrastructure enables telecommunication service  
2 providers to incorporate their charges within the phone bills of more than 90% of business  
3 and residential consumers throughout the United States and Canada.

4 7. The Debtor quickly established itself as a leader in providing LEC billing  
5 solutions for diverse and emerging products and services. The Debtor presently offers a  
6 complete array of complementary services including internet-delivered management and  
7 settlement reporting, direct billing, customer care and collection support. As a strategic  
8 back-room business partner, the Debtor frees its clients to focus their efforts on promoting  
9 and selling products and services.

10 8. The Debtor has served thousands of service providers over the years. The  
11 vast majority of the processed billings have been in support of smaller sized businesses  
12 that otherwise would not have been able to compete. It is the competitive pressure of these  
13 smaller companies that has forced down the rates charged to consumers by the larger  
14 telecommunication companies.

15 9. The Debtor has approximately thirty-seven employees. Twenty-two of those  
16 employees have been with the company for over five years, and thirteen have been with  
17 the Debtor for over ten years. In addition, the Debtor's services support, through  
18 outsourced relationships, approximately 20-30 call center personnel in several different  
19 call centers who are employed by a third-party vendor.

20 10. Access One Communications, Inc. ("Access One") and Network One  
21 Services, Inc. ("Network One") were two of the Debtor's prior AOS customers (Access  
22 One and Network One are collectively referred to as the "Prior Customers").

23 11. On February 27, 2006, the Federal Trade Commission (the "FTC")  
24 commenced a lawsuit (i.e., the Florida Action) against three AOS providers, including the  
25 Prior Customers, as well as their principals, alleging deceptive and unfair practices for  
26 unauthorized billing of charges on phone bills – referred to as "cramming" – in violation of  
27 the Federal Trade Commission Act (the "FTCA"). The Florida Action is captioned Federal  
28 Trade Commission v. Nationwide Connections, Inc., et al., Case No. 06-80180-Civ-

1 Ryskamp, United States District Court for the Southern District of Florida. The Florida  
2 Court entered a temporary restraining order and later a preliminary injunction. The Florida  
3 Court appointed the Receiver as the receiver for the defendants and certain of their  
4 affiliates. An "Amended Preliminary Injunction Order" was filed on September 25, 2006.  
5 On or about September 21, 2006, the FTC filed an amended complaint which included  
6 claims against the Debtor and another billing aggregator.

7 12. The FTC alleged in its Amended Complaint that the Debtor caused certain of  
8 the Prior Customers' fraudulent charges to be placed on end users' phone bills and that the  
9 Debtor was liable under the FTCA in spite of the fact that the LECs, not the Debtor,  
10 perform the billing.

11 13. The FTC has sought injunctive relief against the Debtor as well as monetary  
12 redress including restitution for the allegedly defrauded consumers. There has been no  
13 finding that the Debtor violated the FTCA.

14 14. The Debtor voluntarily stopped providing services for the Prior Customers  
15 over a year prior to the FTC's filing of its Amended Complaint. At the time that it stopped  
16 providing services, the Debtor stopped making payments to the Prior Customers and  
17 instead made a determination under the contracts with the Prior Customers that all further  
18 amounts received from LECs on account of their billings should be booked as reserves.  
19 This was done because of the Debtor's possible exposure to claims for refunds of the Prior  
20 Customers' Billing Transactions.

21 15. Whenever the Debtor allocated an amount to the reserves for the Prior  
22 Customers, the Debtor made a bookkeeping entry for that amount. However, the Debtor  
23 does not have a corresponding asset, such as a bank account, that contains the monies that  
24 were allocated as reserves from the Prior Customers. Moreover, there is no segregated  
25 account containing the reserves of any customer, including either of the Prior Customers.  
26 The Debtor does not have enough monies to cover the full amount of reserves for all of the  
27 Debtor's customers.

28 16. In contrast to the FTC's allegations, the Debtor asserted that the Prior

1 Customers' wrongful conduct caused great injury to the Debtor, including by causing the  
2 Debtor to incur fees and expenses to defend the FTC action.

3 17. The Receiver is seeking to collect all assets of the Prior Customers. Toward  
4 that end, the Receiver sought relief in the Florida Action by motion against the Debtor.  
5 The Receiver asserted that the Debtor owes the Prior Customers the amount that the  
6 Debtor booked as reserves for the Prior Customers, which the Receiver alleged was an  
7 asset of the Prior Customers, in an amount in excess of \$1.7 million. The Receiver further  
8 alleged that the Debtor had violated the Amended Preliminary Injunction Order and should  
9 be held in contempt for failing to turn over the sums demanded by the Receiver.

10 18. The Debtor filed a response opposing such relief on numerous grounds,  
11 including that at the most, any rights the Prior Customers—and therefore the Receiver,  
12 who stood in their shoes—had with respect to the reserves were simply those rights of a  
13 general, unsecured creditor. The Debtor also asserted that it had offsetting claims under  
14 the Subject Contracts against the Prior Customers which exceeded the amount of the Prior  
15 Customers' alleged reserves. In particular, to the extent the Debtor has any liability in the  
16 Florida Action, it arises from the misconduct of the Prior Customers, not the Debtor, and  
17 pursuant to the Subject Contracts, the Prior Customers are liable to the Debtor for such  
18 liability, as well as the costs and fees incurred in the Florida Action. These costs and fees,  
19 and the liability asserted against the Debtor in the Florida Action, far exceed the amount of  
20 any sums withheld from the Prior Customers as reserves.

21 19. The Debtor has expended over \$700,000 in legal fees and costs to date in  
22 defending the Florida Action. That case is set for trial in February 2008.

23 20. The Debtor has also had to devote substantial and valuable management and  
24 employee time and resources to the Florida Action. Given the schedule in that case, the  
25 Debtor's management will need to be diverted even more is issue and would be forced to  
26 further incur such items, to the detriment of its reorganization efforts, if this action were  
27 not stayed as against the Debtor.

28 21. The Debtor believes that it will ultimately prevail in the Florida Action, and

1 that it will ultimately be held to owe nothing to the Receiver. However, the Debtor could  
2 not pay the money sought by the Receiver and still continue its normal operations. The  
3 Debtor requested that the Receiver agree to a stay to the implementation and enforcement  
4 of the Payment Order. The Receiver refused. The Debtor thereafter filed for bankruptcy  
5 protection.

6 22. The Debtor filed for bankruptcy protection because it could not continue its  
7 operations and pay over \$1.7 million to the Receiver. Nor can it afford to have the Florida  
8 Action continue at the outset of this case, when it will divert its management's attention  
9 from the reorganization effort and cost very significant attorneys' fees and costs that the  
10 Debtor cannot afford. The Debtor can only proceed with a successful reorganization if the  
11 Florida Action, including the Payment Order, is stayed.

12 23. The Debtor has submitted a budget to this Court in connection with the  
13 Debtor's cash collateral motion. The budget shows that the Debtor had \$1.9 million in  
14 cash at the filing date and expects receivables to be paid in the next three weeks of \$3.9  
15 million. If that cash is not used to meet secured creditors' claims on it and to make  
16 payments to the Debtor's current customers in exchange for continuing to submit  
17 receivables to the Debtor, then they may, as soon as they are able to do so, stop doing  
18 business with the Debtor and bring its operations to a halt. The Chapter 11 filing has  
19 unsettled the Debtor's customer relationships. For the Debtor to reorganize it needs to  
20 retain these customers. It cannot do so if its scarce resources are used for past claims  
21 asserted by the Receiver and in connection with litigation with the FTC.

22 24. Moreover, if the Prior Customers' claims are paid now, they would receive  
23 far more than their pro rata share of any funds available to return reserves to customers.  
24 The Debtor's current customers have no different entitlement to the Debtor's assets than the  
25 Receiver. If the other customers are not afforded similar relief, then the Prior Customers  
26 will have been preferred to the detriment of the Debtor's other creditors.

27 25. Obviously, the FTC claims it is acting in the public interest by proceeding  
28 with its claims against the Debtor for its involvement with the Prior Customers some two

1 years ago. But the FTC cannot achieve any proper regulatory goal if continuing the  
2 Florida Action merely puts the Debtor out of business, reducing competition in the  
3 marketplace from three firms to two. The Debtor plays an important role in helping keep  
4 telecommunication prices down, thereby serving the public interest. Unless the Florida  
5 Action is stayed, the Debtor is likely to cease operations. A forced liquidation of the  
6 Debtor will forfeit the Debtor's going concern value, leaving the Debtor's creditors much  
7 worse off. A cessation of the business will also cost the Debtor's employees their  
8 livelihoods. This will leave no regulatory purpose to the Florida Action.

9       26. Putting the Debtor out of business would also prejudice the Debtor's existing  
10 customers. Unlike the two Prior Customers who are no longer operating, the Debtor's  
11 other customers are still in business and likely would not be able to switch all of their  
12 billing and collection needs over from the Debtor to one of the Debtor's competitors fast  
13 enough to avoid substantial harm to their business operations.

14       27. The Debtor believes it will be able to successfully confirm a plan of  
15 reorganization. It bases that belief on the fact that on a going forward basis, the Debtor  
16 can be cash flow positive if it maintains its existing level of revenue and does not incur  
17 extraordinary costs arising from previous operations. The Debtor has a number of avenues  
18 open to it to reorganize. It could propose a plan under which it establishes a pot from  
19 which unsecured claims would be paid *pro rata*. It could also propose to issue new  
20 common stock in exchange for the unsecured debt, thus making its creditors into  
21 shareholders, with a stake in outcome of future operations. It could conclude a sale of its  
22 business to a competitor or other buyer and the proceeds of that sale would comprise the  
23 distributions that unsecured creditors would receive, after payment of secured claims and  
24 administrative costs.

25       28. Given sufficient time the Debtor can formulate a plan and negotiate that plan  
26 with its creditors. The Debtor faces no insuperable obstacles to successfully resolving this  
27 bankruptcy case.

28 I declare under penalty of perjury under the laws of the United States of America that the

1 foregoing is true and correct.

2 September 24, 2007

3  
4 /s/ Ken Dawson

5 KEN DAWSON  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28